RAJAN CHELLAIAH

v.

MENTERI SUMBER MANUSIA MALAYSIA & ANOR

HIGH COURT MALAYA, KUALA LUMPUR
KC VOHRAH J
[ORIGINATING MOTION NO: R1-25-71-98]
22 MARCH 2000

ADMINISTRATIVE LAW: *Remedies - Certiorari and mandamus - Application for - Refusal of minister to refer dispute to Industrial Court - Whether justified*

The company offered to employ the applicant as a forest area manager which he accepted. However, before he could commence employment, the company informed him that it was not going to give him a contract of employment. The applicant, citing that he was unjustly dismissed and seeking reinstatement, applied to the minister to refer the matter under s. 20(3) of the Industrial Relations Act 1967 ('the Act') to the Industrial Court.

The minister refused to do so, arguing that the claimant was not a workman within the definition of the Act; that he had not been employed under a service contract; and that this was essentially an issue of offer and acceptance, and the underlying matter was one that involved a breach of promise.

The applicant applied to this court for *certiorari* to quash the minister's decision and *mandamus* to direct the minister to refer the matter to the Industrial Court.

Held:

[1] The facts before the minister did not allow him to conclude as he did that the applicant's grievance was without merits. The interpretation rendered did not take into account the other impinging provisions of the Act, including the definition of the words "employer" and "contract of employment".

[2] Ascertaining whether a person is an "employee" within the meaning of the Act is a question of law. Whether the ensuing interpretation applies to the facts of the case is a mixed question of law and fact, which is clearly within the purview of the Industrial Court to decide.

[3] The minister had erred in declining to refer the matter to the Industrial Court.

[Certiorari and mandamus issued.]

Case(s) referred to:
Sarker v. South Tees Acute Hospital NAS Trust [1997] 1 CR 673
The Hon Minister for Human Resources v. Thong Chin Yoong & Another Appeal [1999] 4 CLJ 161

Legislation referred to:
Industrial Relations Act 1967, s. 20(3)

For the applicant - S Sivaneindiren (Au Yong Pei Yi with him); M/s Cheah Teh & Su
For the 1st respondent - Amarjeet Singh SFC
For the 2nd respondent - Sujatha Balan; M/s Shook Lin & Bok

Reported by Bhawani Mano

JUDGMENT

KC Vohrah J:

Rajan Chellaiah (the applicant) represented that he had been unlawfully dismissed by the 2nd respondent and that he should be re-instated. The Minister of Human Resources (the 1st respondent) refused to refer the representations of the applicant to the Industrial Court under s. 20(3) of the Industrial Relations Act 1967 (the Act) on the following grounds (translated from Bahasa Malaysia):

(i) the (Applicant) is not a "workman" within the context of s. 20 of the Act because s. 2 of the Act states that:

> workman means any person; including an apprentice, employed by an employer under a contract of employment ...

(ii) the (Applicant) was only to report for duty on 1.3.1997 and he had not been "employed by an employer" under a contract of employment;

(iii) what arose in this case was an offer by the Company and acceptance by the (Applicant) (offer and acceptance) and the issue which arises here is one of breach of promise and not dismissal.

I ordered *certiorari* to issue. I also gave an order of *mandamus* directing the Minister to refer the representations to the Industrial Court.

The facts as gleaned from the affidavits are not in dispute. The company (the 2nd respondent) had offered the applicant employment as from 1 March 1997 as a Forest Area Manager in Sarawak in a letter dated 9 January 1997. The applicant accepted the offer by letter dated 4 February 1997.

Before the applicant could start his employment on 1 March 1997 the 2nd respondent, on 19 February 1997, notified the applicant that the company was not issuing him with "a contract of employment".

It is against this background of facts that the Minister gave his reasons for his refusal to refer the representations to the Industrial Court. It is clear that the reasons given arise from his interpretation of the law on the word "workman" as defined in the Act.

The senior federal counsel who appeared in the case before me had argued that the applicant was to report for duty on 1 March 1997 and as such he had not yet been employed by an employer under a contract of employment and that what existed in this case was an offer by the 2nd respondent and an acceptance by the applicant and the issue that existed in the matter was one of breach of promise and not of dismissal. This interpretation, however, does not take into account the other impinging provisions of the Act including the definition of the words "employer" and "contract of employment". One has to be aware of the case of *Sarker v. South Tees Acute Hospital N.A.S. Trust* [1997] 1 CR 673 to know that there is more to delve into when dealing with certain terms which are statutorily defined and which do not necessarily take on their common or ordinary meaning and when other provisions of a statute have to be interpreted; and that in this case all these have to be applied to a set of facts relating to who is a "workman" and the benefits he may obtain under the Act.

The matter before the Minister is not a matter of a straight forward appraisal of facts upon which he can make a decision whether to refer to the Industrial Court or not. Whether the applicant is or is not a "workman" within the meaning of the Act is a question of law and whether the ensuing interpretation applies to the facts of the case is a mixed question of law and fact and these matters are clearly matters for the Industrial Court to decide. The Minister had "failed to fully appreciate the scope of his discretion under s. 20(3)" of the Act when he declined to refer the representations to the Industrial Court. As was stated in *The Hon Minister for Human Resources v. Thong Chin Yoong & Another Appeal* [1999] 4 CLJ 161 at p. 166:

> Whether or not an employee was constructively dismissed is a question of law which is not the province of the Minister to decide and we feel that the minister is not competent to decide and the Industrial Court is the best venue to decide this question. In the proper exercise of his discretion the Minister ought to have referred the respondent's representation to the Industrial Court to decide on its merits. Therefore, we are equally of the view that the Minister failed to fully appreciate the scope of his discretion under s. 20(3) of the Act, when he declined to refer to the Industrial Court ...

Other issues were raised by the applicant as well as by the 1st and 2nd respondent but I do not think it is necessary for me to examine these issues, some of which are completely irrelevant, in view of the application succeeding on the earlier ground.

I gave an order for *certiorari* to issue and for an order of *mandamus* directing the Minister to refer the representations to the Industrial Court for an award with costs to the applicant.